

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

February 12, 2010

Leroy Boyce, Jr.
20609 Atlantic Road
Bridgeville, DE 19933

Career Associates, Inc.
Sylvia Parsons
100 Clemwood Street
Salisbury, MD 21804

Re: ***Boyce v. Career Associates, Inc.***
C.A. No. S09A-08-006-RFS

Dear Mr. Boyce and Ms. Parsons:

Pending before me is Claimant Leroy Brice's appeal of a decision of the Unemployment Insurance Appeal Board ("Board") denying his petition for a rehearing of its determination that he is not entitled to unemployment benefits. As explained below, the Board's decision is affirmed.

The record shows that Claimant was separated from his employment when he broke his ankle while employed by Career Associates doing sanitation collection on assignment to the City of Dover. He received unemployment benefits, including medical expenses, from August 2007 through January 2009, when he was awarded a final settlement of \$15,000. He filed a claim for benefits with the unemployment office in

January 2009. Other than three or four days of light cleaning for Best Temps in Dover in December 2007, Claimant has not worked since his work accident in August 2007.

At the hearing before the Appeals Referee, Claimant stated his desire to return to work and submitted a Release of Information/Doctor's Certificate from Eric T. Schwartz, M.D. The Certificate states that as of September 2008 Claimant was released to desk duty only. Claimant testified that he is not trained for any type of desk work and would like to operate a forklift, which he has done previously. A witness for Career Associates who handles unemployment claims testified that the company had no work for which Claimant is qualified and that the \$15,000 was a final settlement. The Appeals Referee denied the petition for benefits.

Claimant appealed to the Board, which also held a hearing. The Board decision stated that the Appeals Referee's decision was affirmed and denied benefits to Claimant. The Referee's decision was based on the involuntary nature of Claimant's departure from work because of his broken ankle. However, the decision also reflected the undisputed fact that Claimant's doctor released him to desk duty, for which he has no experience or training whatsoever. "If an individual has left work involuntarily because of an illness, no disqualification shall prevail after the individual becomes able to work and available for work and meets all other requirements under this title, but the Department shall require a doctor's certificate to establish such availability." 19 *Del. C.* § 3314(1). The Referee correctly applied this statute to the facts of Claimant's case, finding that Claimant left his work involuntarily for medical reasons, but is unable to do the only type of work

he is accustomed to doing. In other words, he is not available for work. According to Claimant, his work experience is limited to sanitation work and operation of a forklift.

After the first Board decision, Claimant mailed a copy of the Release of Information/Doctor's Certificate to the office of the Division of Unemployment Insurance. Although no note accompanied the Certificate, the Board construed the submission as a motion for a rehearing. However, the Certificate was postmarked four days after the date that the Board's decision became final, and the Board declined to consider it. The first page of the Board's decision explained how to file an appeal and also stated that the decision became final on May, 28, 2009, whereas Claimant's Certificate was postmarked June 1, 2009. The Court finds substantial record evidence to support the Board's decision¹ and also finds no abuse of discretion in the Board's refusal to entertain Claimant's motion for a rehearing.²

For these reasons, the Board's decision denying Claimant's motion for a rehearing is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original - Prothonotary

¹*Kondzielawa v. Ferry*, 2003 WL 21350538 (Del. Super.).

²*Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572 (Del. Super.).

